

MINUTES
TENNESSEE BOARD OF OSTEOPATHIC EXAMINATION
December 1, 2004

A regular meeting of the Tennessee Board of Osteopathic Examination was held in the Tennessee Room located on the Ground Floor of the Cordell Hull State Office Building on December 1, 2004.

Members Present: Jill Robison, DO; Donald H. Polk, DO; Paul Smith, Jr., DO; Joyce Ann Brown, DO and Rafael Sanchez, DO

Staff Present: Rosemarie Otto, Medical Board Director, Sheila Bush, Administrator, Marsha Arnold, Manager, Robert Kraemer, Advisory Attorney, Jerry Kosten, Rules Coordinator, Lea Phelps, Disciplinary Coordinator and Laurie Doty, Attorney and Ann Johnson, Administrative Judge

The Board convened at 9:20 a.m. with the President, Dr. Robinson, presiding. Dr. Robinson determined that a quorum of members was present in order to conduct Board business.

Ratify Minutes of Previous Meeting

Dr. Polk made a motion to accept the minutes from the August 26, 2004 meeting. Dr. Brown seconded the motion. Motion carried.

Disciplinary Report

The Board reviewed the disciplinary report submitted by Ms. Lea Phelps, Disciplinary Coordinator. Ms. Phelps informed the board that there are two licensees on probation currently being monitored in her office.

Managers Report

Ms. Rosemarie Otto, Executive Director for the Medical Board gave the Director/Manager report to the Board. Ms. Otto informed the Board that there are 652 active licensees in the State of Tennessee as of October 2004. There 25 licensed Midwives and 16 DO X-Ray operators. Ms. Otto also mentioned that the February meeting has been re-scheduled to March 23, 2005 at 1:00 p.m. She also informed the Board that the Department would be providing "trial training" to the Board on the same day commencing at 8:15 a.m.

Investigative Report

The Board reviewed the investigative report submitted by Ms. Lea Phelps, Disciplinary Coordinator of the Office of Investigations. Ms. Phelps informed the Board that they have one case pending in the Office of Investigations.

Office of General Counsel

Mr. Robert Kraemer read his report to the Board and reported that there were nine open disciplinary cases in the Office of General Counsel and one rule in the Secretary of State's Office.

Financial Report

The Board reviewed the financial report submitted by Ms. Lisa Tittle, Director of Administrative Services.

Rulemaking Hearing

Jerry Kosten, Rules Coordinator, presented to the Board amendments to Board rule 1050-2-.13 concerning prescription writing and Board rule 1050-2-.20 which pertains to Free Health Clinic and Volunteer Practice Requirements. After review, a motion was made by Dr. Sanchez and seconded by Dr. Brown to adopt the amendments to Board rule 1050-2-.13 and 1050-2-.20. Motion carried.

Dr. Polk made a motion to ask Dr. Robinson to draft a statement about the Board's position on prescription legibility. Dr. Smith seconded the motion. Motion carried.

Interviews

Dr. Dennis Bartasis, D.O. – Dr. Bartasis was present at the Board meeting at the request of Dr. Smith who had reviewed his application file. Dr. Bartasis answered yes to questions 11 (a) and 11 (b) on his application. After discussion, Dr. Smith made a motion to approve Dr. Bartasis's application. Dr. Sanchez seconded the motion. The motion carried.

Dr. Evann Max Herrell, D.O. – Dr. Herrell was present at the Board meeting at the request of Dr. Sanchez who had reviewed his application file. Dr. Herrell answered yes to question 2 on his application. After discussion, Dr. Sanchez made a motion to approve Dr. Herrell's application. Dr. Brown seconded the motion. The motion carried.

General Discussion

Rosemarie Otto informed the Board that the Council of Certified Professional Midwifery Committee is being audited by the Department of Health. Also, Ms. Otto explained to the Board that the Council of Certified Professional Midwifery has a deficit, a low number of licensees, and that they are not in compliance with their statute which requires them to meet twice a year. She informed the Board of the possibility that the council may be dissolved but would remain a licensed profession under the auspices of the Osteopathic Board.

Andrea Willis, M.D., Deputy Commissioner for the Department of Health discussed with the Board the Commissioner's Health Initiatives. Dr. Willis reported they were working on improving the quality of life to make a difference in Tennessee health. Dr. Willis informed the

Board they could e-mail John Ferguson with ideas at john.ferguson@state.tn.us. Dr. Polk suggested a return to physical education as mandatory for all students in kindergarten through grade 12.

Dr. Polk reported attending the Controlled Substance Database Advisory Committee meeting. Dr. Polk states that the committee is looking at other states' procedures and ways to apply for grant money to obtain the computer system that would be needed. He informed the Board that at the last meeting the Committee authorized the Department of Commerce to seek federal grant money to help defray the cost of establishing and maintaining the database.

Contested Cases

George A. Bailly, D.O. – Dr. Bailly was not present nor represented by legal counsel. Ms. Laurie Doty represented the State. The Honorable Ann Johnson, Administrative Law Judge presided. Ms. Doty asked the Board to proceed with the hearing by default. The Board agreed. Ms. Doty then handed out the Notice of Charges and the agreed order from the State of Texas to the Board for review. Dr. Bailly's license to practice osteopathic medicine in the State of Texas was suspended March 7, 2003 and effective March 28, 2003. Also, on May 16, 2003 the Commonwealth of Virginia, Department of Health Professional suspended Dr. Bailly's license to practice osteopathic medicine in the State of Virginia. Dr. Bailly is charged with violating TCA 63-9-111 (b) (21). The Board voted to suspend Dr. Bailly's Tennessee license for a minimum of one (1) year, should Dr. Bailly seek to have his suspension lifted, his license shall be placed on probation for five (5) years. The Board also assessed the cost of the hearing and assigned a civil penalty in the amount of two thousand dollars (\$2,000), one thousand per violation. Also, the Board requests proof of completion of requirements required by the States of Texas and Virginia. Motion carried. Note: Dr. Sanchez, who was late arriving to the meeting, did not participate in the resolution of this matter.

Gary D. James, D.O. – Dr. James was not present nor represented by legal counsel. Ms. Laurie Doty represented the State. The Honorable Ann Johnson, Administrative Law Judge presided. Ms. Doty asked the Board to grant the hearing by default. After discussion, the Board voted to continue the hearing until the next scheduled meeting to be held on March 23, 2005 at 1:00 p.m., C.S.T. The Board asked Ms. Doty to make three (3) attempts to contact Dr. James by certified mail, return receipt requested. Motion carried.

File Review

Dr. Lynn Preston, D.O., file was reviewed by the Board. Dr. Robinson made a motion to approve Dr. Preston's application file for licensure. Dr. Smith seconded the motion. The motion carried.

Laura McGowan, D.O., X-ray operator, file was reviewed by the Board. Dr. Smith made motion to approve Ms. McGowan's application file for reinstatement of licensure. Dr. Robinson seconded the motion. The motion carried.

Dr. Mary Jane Misischia, D.O. file was reviewed by the Board. Dr. Smith made a motion to approve Dr. Misischia's application file for licensure. Dr. Brown seconded the motion. The motion carried.

Dr. Bennie Johnson, D.O., file was reviewed by the Board. Dr. Smith made a motion to approve Dr. Johnson's application file for reinstatement of his osteopathic licensure. Dr. Brown seconded the motion. The motion carried.

Dr. Timothy McPhearson, D.O., file was reviewed by the Board. Dr. Brown noted for the Board that Dr. McPhearson had a malpractice judgment of \$15,000. Dr. Sanchez asked that the matter be deferred until staff obtained from Dr. McPhearson details surrounding the judgment. After a discussion of the unlikelihood that a \$15,000 judgment would be gross malpractice, and since gross malpractice would be the sole basis for denial by the Board, Dr. Polk suggested and Dr. Smith made a motion to approve the application contingent upon additional information submitted to the staff and forwarded to Dr. Brown for review. Dr. Polk seconded the motion. The motion carried.

Dr. Richard Misischia, D.O., file was reviewed by the Board. Dr. Polk made a motion to approve Dr. Richard Misischia's application file for licensure. Dr. Smith seconded the motion. The motion carried.

Ratification of New Licenses, Reinstatements and Fail to Renew

Dr. Polk made a motion to ratify the new osteopathic physician licensees, midwives and x-ray operators, reinstatements and failed to renew licenses along with the following that were not on the list; Dr. Daniel G. Bercu, D.O. and Lynda K. Sims Hoskins, CPM. Dr. Smith seconded the motion. The motion carried.

Dr. Polk made a motion to adjourn at 1:25 p.m. Dr. Brown seconded the motion. Motion carried.

Donald Polk, DO, Secretary

SB/G3025094/BOEmin